Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1322

BETTY ISON,

Petitioner,

vs.

THE FIRST STATE BANK OF CENTRALIA, CENTRALIA, ILLINOIS, *et al,*

Respondents.

On Petition For Writ of Certiorari To The Illinois Appellate Court, Fifth District, Mt. Vernon, Illinois

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT

An accurate statement of the material facts is as follows:

Troy C. Ison and Betty Ison were husband and wife. They were President and Secretary of Troy C. Ison, Inc., a family corporation. Pursuant to application, Respondent, The First State Bank of Centralia, Illinois, made a $60,000 loan to the corporation upon condition that repayment be secured by a First Mortgage on certain real estate and the personal guarantees of Mr. and Mrs. Ison.

Thereafter, the Isons were divorced, the corporation and Mr. Ison escaped their obligations through bankruptcies and a mortgage foreclosure has resulted in a $27,000 deficiency Judgment against Petitioner Betty Ison, which she seeks to avoid through charges of discrimination in violation of the Fourteenth Amendment to the United States Constitution.

THE ISSUE

Whether a bank requirement that a husband and wife "sign" their family corporation business loan is discriminatory in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

REASONS FOR NOT GRANTING THE WRIT

I.

The Petitioner Has Not Been A Victim Of Discrimination

The business loan of Troy C. Ison, Inc. was made upon certain conditions which were met voluntarily. Neither the Petitioner nor the husband were required to meet those conditions and the Respondent bank was not required to *otherwise* make the loan.

"The execution of the mortgage note by Troy C. Ison and Betty Ison, as individuals, was required as one of the loan conditions because of their relationship both to Troy C. Ison, Inc. and to each other".

It has been held that to assert discrimination against a private party one must establish a discriminatory intent. *Arlington Heights* v. *Metro Housing Authority* 429 U.S. 252 (1977); *Washington* v. *Davis* 426 U.S. 229 (1975).

Here, the bank's *sole* purpose was to adequately secure repayment of the loan which it apparently failed to do notwithstanding the individual signatures of Mr. and Mrs. Ison. There is no evidence of discriminatory intent.

Any inference that the Respondents bank always requires the joinder of spouses in a business loan to the other is simply contrary to fact. It is a matter of common knowledge that many "business loans" are amply secured and made without the joinder or signature of the particular spouse involved.

Furthermore, while the Federal Constitution prohibits discrimination on the basis of sex, *it does not* prohibit normal business practices which are not discriminatory. *Flagg Brothers* v. *Brooks* 436 U.S. 149, 98 S. Ct. 1729 (1978); *Moose Lodge* v. *Irvis* 407 U.S. 163 (1972); *Reed* v. *Reed* 404 U.S. 71, 92 S. Ct. 251 (1971); *Shelly* v. *Kraemer* 334 U.S. 1, 68 S. Ct. 836 (1948).

II

The State Court Action Is Not Subject To Attack For Enforcement Of The Alleged Discrimination

Petitioner claims that *Shelly* v. *Kraemer* 334 U.S. 1 (1948), stands for the proposition that any State Court action may be attacked when it is the tool of discrimination. This is clearly erroneous. For a State Court action to be subject to attack as enforcing a discriminatory contract, there must exist a nexus relating to the discrimination complaint to the Court action. In *Shelly* v. *Kraemer,* the action was judicial enforcement of restrictive covenants explicitly barring Negroes from owning certain real estate. Here the situation is much different. All that is asked is the enforcement of a deficiency Judgment rendered on a note which on its face is nondiscriminatory, it making no difference what the sex of the signer was in effecting its validity.

Another case which requires a greater showing of state action is *Moose Lodge* v. *Harris* 407 U.S. 163 (1972). There a Negro was denied service by a private club solely because of his race. In sueing for injunctive relief the Plaintiff contended that the extensive regulation of liquor licenses in Pennsylvania provided the requisite State action. In rejecting this argument the Court noted that the State must significantly involve itself with invidious discrimination. (407 U.S. 173). Accord, *Flagg Brothers* v. *Brooks* 436 U.S. 149, 98 S. Ct. 1729 (1978).

No such intimate involvement is present here. Judicial enforcement of a deficiency Judgment is sexually neutral. Therefore, relief under the Fourteenth Amendment must be denied, due to the lack of State action.

III.

A Lending Agency Requirement That Notes Be Co-Signed By Both The Borrower And His Or Her Spouse Is Not A Matter Warrantying Review By This Court

Petitioner concedes that business loans are uniformly excluded from State and Federal laws which prohibit discrimination in financing. Thus, from a statutory viewpoint, the conduct which is asserted as discriminatory is in fact permissible and therefore not discriminatory.

The reasons for this exception are fairly obvious. The differences between consumer and business loans are vast. Generally, consumer loans are for smaller amounts than business loans; the risks involved in granting business loans are not only greater in terms of the sums lent, but in the larger number of dangers involved. Businesses may and do fail for myriad reasons.

Commercial bank loans represent the single largest source of private small business financing. 1 O'Neal, Close Corporations; Law and Practice Section 2.08 (1971). The policy suggested by Petitioner would make voidable a large percentage of the loans currently held by banks. It is the common practice for banks to require family members to assume liability for business loans. This practice does not depend on the sex of the family members but is instead necessitated by the need for security for loans made to small businesses with relatively few assets in contrast to liabilities. To prohibit this sound business practice would result in an almost immediate disappearance of funds available for the financing of small family businesses. The ultimate rationale for this practice is the benefit conferred upon the family by the granting of the loans, thereby enabling this most valuable unit the means for prospering. It would be a fatal blow to small business financing to prohibit a lender from requiring a spouse's secondary liability, especially when that spouse is a corporate officer.

CONCLUSION

The Petition for Writ of Certiorari fails to demonstrate any valid reason as to why this case should be the subject of further review. We therefore suggest that said Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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